DOCKET FILE COPY ORIGINAL

RECEIVED
DEC 1 9 1996
FCC MAIL ROOM


**State of Vermont**
**Public Service Board**
**Chittenden Bank Bldg., 4th Floor**
**112 State Street**
**Drawer 20**
**Montpelier, VT 05620-2701**
**Tel.: (802) 828-2358**
**TDD (VT Relay): 1-800-253-0191**


December 18, 1996

**VIA FEDERAL EXPRESS**

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, D.C. 20554

Re: CC Docket Number 96-45

Dear Mr. Caton:

Please find enclosed an original and four (4) copies of the Comments of the State of Vermont Department of Libraries, State of Vermont Department of Public Service, and State of Vermont Public Service Board in the above docket.

I also enclose one additional copy, marked "STAMP COPY." Please date stamp this copy and return it to me in the enclosed postage-paid envelope.

Sincerely,

Peter Bluhm

Peter M. Bluhm
Policy Director

Enclosure (postage-paid envelope)
cc: Libraries, DPS

No. of Copies rec'd 0+4
List ABCDE

**Before the**
**Federal Communications Commission**
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| Federal-State Joint Board on | ) | CC Docket No. 96-45 |
| Universal Service | ) | |

**COMMENTS OF:**

**THE STATE OF VERMONT DEPARTMENT OF LIBRARIES;**

**THE STATE OF VERMONT DEPARTMENT OF PUBLIC SERVICE; and**

**THE STATE OF VERMONT PUBLIC SERVICE BOARD**

Patricia E. Klinck
Vermont Department of Libraries
109 State Street
Montpelier, Vermont 05602

Sheldon M. Katz, Esq.
Vermont Department of Public Service
112 State Street
Drawer 20
Montpelier, Vermont 05620-2601

Peter M. Bluhm, Esq.
Vermont Public Service Board
Drawer 20
Montpelier, Vermont 05620-2701

## SUMMARY

The Vermont Departments of Libraries and Public Service, and the Vermont Public Service Board believe the Commission should finance federal universal service programs with a charge on the combined (interstate and intrastate) revenues of providers of interstate telecommunications services. This is permitted by the 1996 Act, and is compatible with parallel provisions relating to the support of state universal service programs. Nothing in the jurisdictional separation of rates between interstate and intrastate services should stand as a barrier to implementing such a plan.

If the Commission should limit contributions for universal service to interstate revenues, several harmful effects would follow. The system would have a strong incentive for carriers to find ways to bypass the charge. Also, the system would harm many states with small populations who would contribute disproportionately to federal programs and have relatively little revenue remaining to support their own state programs.

Finally, imposing a charge on the combined revenues of interstate carriers offers opportunities for compatibility with existing state programs, as well as simplified administration for carriers.

The Commission should increase lifeline benefits, as recommended by the Joint Board. However, this change will only increase subscribership if the Commission's provides adequate support for high cost areas.

The scope of local calling areas affects affordability. Vermont has expanded local calling areas recently, and some customers are paying significant per-minute charges for local service.

As a rural state, Vermont has many small schools and libraries, and these institutions should have flexibility in purchasing telecommunications services. The Commission should ensure that telecommunications services are adequately discounted before mandating discounts for other services, such as inside wiring or internet services. Discounts should apply to local measured service charges. Administration should be simple, and appropriate to small institutions; there should be no complex bidding or RFP requirements. Finally, resale restrictions should not prevent collection of legitimate school or library fees.

# TABLE OF CONTENTS

RECEIVED
DEC 1 9 1996
FCC MAIL ROOM

# I. Administration

## A. Combined Revenues

The Commission should derive revenues for all universal service programs, including high cost programs, from a surcharge on the combined (interstate and intrastate) revenues or sales of interstate carriers ("combined revenues option"). It should reject the option of deriving revenues only from the interstate revenues of interstate carriers ("interstate revenues option"). This conclusion has both legal and practical dimensions.

### 1. The meaning of "providing interstate service."

The Commission has authority under the Telecommunications Act of 1996 ("Act") to impose a charge on the combined revenues of interstate carriers. Subsections 254(c) and (d) of the Act authorize the FCC to establish universal service programs and to develop methods of financing those programs. Subsection (d) requires "every telecommunications carrier that provides interstate service" ("interstate carriers") to contribute to federal universal service programs. This is sufficient authority for the FCC to adopt the combined revenues option, and is independent of the FCC's other ratemaking authority.

In identifying a revenue stream to fund universal service, the Commission should rely on the plain meaning of the words in the Act. The Act requires that "every telecommunications carrier that provides interstate telecommunications services" must contribute to universal service. The plain meaning of this statement is an identification of carriers who must contribute to universal service. The statement is silent on the basis upon which those contributions should be assessed. The statement does not even require that contributions be based upon the revenues of carriers, and certainly does not say that it must be based upon the interstate revenues of carriers.

The Act does contain some general standards for the collection mechanism. It requires the Commission to finance universal service programs by "equitable and nondiscriminatory" contributions.[1] The Act does not explain how "equitable and nondiscriminatory" should be interpreted, but some broad parameters can be assumed.

---

[1] 47 U.S.C. § 254(b)(4).

For example, funding for the existing high cost program is derived solely from interexchange carriers, based upon a monthly assessment on each line presubscribed to that carrier. This probably would not be "equitable and nondiscriminatory" since it requires only interexchange carriers to contribute to universal service.

The Act does not explicitly require that collections for universal service be based upon carrier revenues. However, as suggested by the Joint Board,[2] such a choice could produce an equitable and nondiscriminatory system. As discussed below, unless those revenues constitute both the intrastate and interstate revenues of such carriers, the result may be discriminatory against carriers and against some states.

### 2. Revenues for State Programs

Contrasting language in the Act specifies contributors to state programs. Subsection 254(f) states that "every telecommunications carrier that provides *intrastate* service" ("intrastate carriers") must contribute to state universal service programs.[3] As with the language applicable to the Commission's programs, the plain meaning of this language supplies an adequate interpretation. The statement defines the carriers who must contribute to universal service, not the basis upon which those contributions should be assessed.

Some have questioned whether the lack of practical contrast between the "carriers who provide interstate service" in subsection 254(d) and "carriers that provide intrastate service" in subsection 254(f) renders the terms meaningless. Therefore, this argument runs, Congress must have meant something else, something broader, possibly that the Commission must limit itself to supporting universal service from the "interstate revenues" of "carriers that provide interstate service." This argument has no merit, as the two terms have legitimate legal and practical consequences.

The commenting parties know of no basis in legislative history or statutory interpretation for such a reading. Unfortunately, the conference report accompanying the Act is silent on the legislative intent behind the key language. This in itself is sufficient

---

[2] Joint Board Recommendations, ¶ 807.

[3] 47 U.S.C. § 254(f).

reason to apply the plain meaning of the words. When interpreting an act of Congress, an agency should be guided first by the plain meaning of the words used in the law.[4] The plain meaning of the words creates a duty on carriers to contribute to federal universal service, and says nothing about the basis for those contributions.

Congress should be assumed to have placed this language in the Act with a purpose in mind. Even under a narrow reading of the language, such a purpose is easily found.

First, consider the structure of the language in subsection 254(f). On its face, it requires "every telecommunications carrier that provides intrastate service" to contribute to a state's program. The converse is also implicit, however: states *may not* finance their programs from carriers who do not provide intrastate service to that state. In other words, the Act prohibits states from asserting their taxing powers over carriers who do not have a sufficient nexus to that state to justify assertion of the taxing power. This is a legitimate legislative purpose and justifies the language in the Act.

This purpose also makes sense in light of prior court decisions interpreting state taxation powers. The Supreme Court has held that states do not violate the "dormant Commerce Clause" of the United States Constitution by imposing a tax on interstate activity so long as:

- the activity taxed has a substantial nexus with the taxing state;
- the tax is fairly apportioned;
- the tax does not discriminate against interstate commerce; and
- the tax is fairly related to the services provided by the State.[5]

In 1989, the U.S. Supreme Court applied this test to interstate telephone calls when it sustained the Illinois sales tax.[6]

Congress undoubtedly knew that the Commerce Clause requires a "nexus" between the taxing state and the interstate service subject to taxation. With this knowledge, Congress may very well have added the intrastate carrier language to section 254(f) of the

---

[4] *Mississippi Power & Light Co. v. Moore*, 487 U.S. 354, 380, 108 S.Ct. 2428, 2443 (1988); *Chevron, U.S.A. v. Natural Resources Defence Council, Inc.*, 467 U.S. 837 (1984).

[5] *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 115 S.Ct. 1331, 1337 (1995).

[6] *Goldberg v. Sweet*, 488 U.S. 252, 109 S.Ct. 582 (1989).

Act, ensuring not only that the service must have a nexus with the state, which was already required under the Constitution, but that the carrier who provides the service must also have such a nexus. Once again, this is an entirely legitimate purpose for legislative enactment and supports an interpretation of the Act using the plain meaning of the words.

The intrastate carrier language in subsection 254(f) of the Act does not have a negligible effect. In Vermont and presumably in many other states, some resellers currently are authorized to provide only interstate services. Many of these resellers are also seeking to provide intrastate services as well. However, in many cases a carrier's offer of interstate services precedes by many months its authorization from the Public Service Board to do business in Vermont selling intrastate services. Under subsection 254(f) of the Act, Vermont probably cannot subject such carriers to its own charges for universal service.

Once Congress had made the decision that state programs would be limited to intrastate carriers, it could then have decided, on the basis of comity, that federal programs would be supported solely by interstate carriers. By limiting federal program funding solely to carriers engaged in interstate commerce, Congress may have been responding to a real or perceived need to avoid federal taxation of entirely intrastate enterprises.

Seen in this light, the distinction is clear between the interstate carriers subject to the Commission's jurisdiction and the intrastate carriers subject to state jurisdiction. The plain language of the Act covers legitimate Congressional concerns about the limits on state taxing powers and on federal comity with state programs. Further, the language has a significant practical effect.

### 3. Jurisdictional Separation

The jurisdictional separation between the states and the federal government does not prohibit the Commission from imposing a charge on the intrastate revenues of interstate carriers. Moreover, imposing such a charge would be consistent with the distributional purpose of the program.

It has been suggested that the jurisdictional separation between the states and the Commission requires the Commission to levy a charge only on the interstate revenues of interstate carriers. We reject this interpretation.

The jurisdictional separation statute ("section 152(b)") gives the states sole jurisdiction over:

> charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier.[7]

There is a significant difference between the collection of funds to finance universal service programs and the rates and conditions of intrastate service. States have sole jurisdiction over the latter, but subsection 254(d) of the Act gives the Commission independent authority to collect funds. That authority is not constrained by section 152(b). The existing limits on federal ratemaking remain fully in effect, but only as to ratemaking. Those limits were not extended in the Act to apply to the new statutory authority for the Commission's universal service programs.

It is also important to remember the purpose of Section 254 of the Act. In high cost areas in particular, the Commission is tasked with ensuring that customers have access to telecommunications and information services "at rates that are reasonably comparable to rates charged for similar services in urban areas." The Congress clearly directed the Commission to establish programs to manage the rates charged for intrastate "telecommunications and information services." Since the program distributes money to solve a problem in the intrastate jurisdiction, it is plausible that Congress expected that program would raise money from the intrastate jurisdiction.

### 4. Equitable and Nondiscriminatory Contributions

The Act requires that contributions for universal service be "equitable and nondiscriminatory."[8] Since this requirement refers to "universal service," it presumably

---

[7] 47 U.S.C. § 152(b).

[8] 47 U.S.C. § 254(b)(4).

applies both to federal universal service programs under subsections (c) and (d) and to state universal service programs under subsection (f). If the Commission were to adopt the interstate revenues option, it might be inequitable and discriminatory against some carriers and some services.

The Telecommunications Industries Analysis Project estimated the intrastate and interstate revenues of each state. Then, the NARUC Staff Subcommittee on Communications performed a modeling exercise using a variety of scenarios. The first option examined used the "BCM2" proxy model and a revenue benchmark at $20 per line per month. The net national cost of this high cost program was $14.7 billion. Using a charge on net interstate revenues, the study disclosed that a charge rate of 21.3 percent was needed. By contrast, if the combined revenues of interstate carriers were used, the charge rate would be 8.9 percent. Even under more modest distribution parameters, similar differentials remain between the charge rate on interstate services and the charge rate on combined services.

This analysis shows that the Commission should seek to apply as low a rate as possible, applied to as broad a base as possible. To do otherwise would create incentives for bypass that could distort the reporting of carrier revenues and contributions as well as the development and marketing of telecommunications services.

For example, if there were a charge of 20 percent on interstate services, but little or no charge on intrastate services, many competitive carriers would have a strong incentive to inappropriately reclassify interstate services as intrastate.

Even when a carrier chooses to follow the rules scrupulously, it may not be a simple matter to determine how to apply those rules. It may not always be easy for carriers to determine when revenues are derived from intrastate services and when from interstate services. The risk is accentuated by the fact that the Commission now allows non-dominant carriers to provide services without filing tariffs.

Finally, a large differential between the charges on interstate services and intrastate services could distort product development and marketing. We note that some carriers are now creating interstate discounts based upon purchasing volume for combined (interstate and intrastate) services. If the interstate jurisdiction were burdened with high universal service charge rates, this could cause carriers to shift discounts to the jurisdiction with the higher charge rate. One harmful effect of such a shift would be distortion of the process of separating jurisdictional costs and revenues.

The Commission can avoid creating such perverse incentives by requiring contributions for universal service from as broad a revenue base as possible. The combined revenues option would reduce or avoid bypass. To the extent that both intrastate and interstate revenues would be subject to equal charges, carriers would have no incentive to improperly classify services to either category. The combined revenues option may be the only way to finance the Commission's universal service programs equitably and without discrimination.

### 5. Equitable Treatment of the States

The interstate revenues option would produce inequitable and discriminatory results for some states.

From the Telecommunications Industries Analysis Project estimates of interstate and intrastate revenues of interstate carriers, it is a simple matter to calculate a percentage of total revenues that are derived from intrastate services. Excluding Alaska, the District of Columbia and Hawaii because of special circumstances, the differences among the states are noteworthy. In South Dakota, only 40.3 percent of the telecommunications revenue is intrastate in character. At the other extreme, in Michigan 66 percent of net carrier revenues are intrastate. The summary of this data analysis is attached to these comments.

There is a strong correlation between the percentage of revenues from the interstate jurisdiction and the size of the state. If state "size" is defined operationally as the logarithm of the state's population, the correlation between size and percent intrastate revenue is 0.81, and the "R-squared" is 0.65. In other words, 65 percent (almost two-thirds) of the variation in the percent intrastate variable can be explained simply by the size of the state's population. This is a remarkably strong correlation.

This finding makes intuitive sense. Customers in states with small populations will tend to make more calls out of state to relatives, friends and business associates. Conversely, states with large populations will tend to be more self-sufficient within their own boundaries.

This strong correlation between size and intrastate revenue share has two related policy effects. First, it demonstrates that if the Commission were to adopt the interstate revenues option, it would draw support for its program disproportionately from states with small populations. This would be inequitable and discriminatory as to those small states. On the other hand, if the Commission were to adopt the combined revenues option, contributions would come from all revenues in each state, and no state would be disadvantaged because its citizens are required, because of size, to make a high proportion of interstate telephone calls.

Second and even more important is the effect on state programs for universal service. If the *interstate* revenues option were selected for federal programs, states would be likely to identify only *intrastate* revenues for their own programs.[9] States thus will be able to support their own programs only to the extent that they have a base of intrastate service revenues. However, as was shown above, small states have comparatively little intrastate revenue, as a proportion of the total. To achieve comparable results, therefore, small states would be required to impose substantially larger charges on their intrastate revenue streams.

The NARUC Staff Subcommittee on Communications study demonstrates this phenomenon. Under one scenario examined, the Commission would fund a revenue benchmark of $30 based on a charge on interstate services; and the states would elect to establish supplemental programs based on a charge on intrastate services that provides additional support, effectively reducing the revenue benchmark to $20. Assuming the BCM2 proxy model, states would have to impose rates on intrastate revenues varying from 4.8 (New York) percent to 13 percent (West Virginia) to finance these supplemental programs.[10] In other words, states with a large need and little intrastate revenues would have to impose significant burdens on their own intrastate revenues, while other states

---

[9] As mentioned above, this is not the only choice. Under *Goldberg v. Sweet*, *supra*, states are free to impose a charge on the interstate revenues of interstate carriers. However, they would be unlikely to do so at least so long as the charge rate on intrastate revenues remains lower than the charge rate on interstate revenues.

[10] These data once again exclude Alaska, D.C., and Hawaii.

impose slight burdens. This would be inequitable and would discriminate against states with small populations.

### 6. Coordination with State Programs

The combined revenues option could harmonize better with state programs and could produce administrative savings for carriers.

If the Commission selects the combined revenues option, many states might finance their own supplemental programs by a similar charge on the combined revenues of intrastate carriers. In these states, carriers would pay two charges on their combined revenues, one to the FCC's fund administrator and the other to the state.[11] This offers a significant opportunity to harmonize the administration of state and federal programs, and could produce accounting savings for carriers.

A federal program based on combined revenues would be most compatible with the existing Vermont Universal Service Fund ("VUSF"). The VUSF now operates on a combined revenues basis, and currently surcharges all telecommunications transactions billed to a Vermont address at the rate of 1.4 percent.[12] When calculating their obligation to collect VUSF payments, carriers are not required to determine whether a service was intrastate or interstate, only whether the bill was sent to a Vermont address. If the Commission's program were to operate on similar principles, calculations by carriers would be simplified and the program would operate most compatibly with the VUSF.

### 7. Sales or Gross Receipts Charges

An important issue is whether the Commission imposes a charge on telecommunications revenues of carriers or on the purchase by the customer. A "sales tax" type charge:

- is a charge on the customer, but is collected and reported by the carrier.

[11] Of course, carriers providing only interstate service would pay only one charge to the federal program; and carriers providing only intrastate service would pay only one charge to the state program.

[12] Vermont Statutes Annotated, Title 30, § 7521(a). The rate is adjusted annually to finance the state's needs in the E-911 program and in the lifeline and TRS programs.

- is normally stated explicitly on the customer's bill, after the gross amount owed to the carrier.
- does not require the carrier to raise rates.

By contrast, a "gross receipts" type charge:

- is a charge on the revenues of the carrier, which must raise rates to cover the added payment.
- can be stated on the customers bill, but often is not.
- requires slightly more complex mathematics in establishing the proper charge rate because the charge is based on carrier net revenue, but the net revenue includes the charge.

In enacting the VUSF, the Vermont Legislature decided to create a sales type charge. One reason was to make the charge for universal service explicit. To the extent that the Commission is seeking to convert implicit subsidies into explicit subsidies, it might prefer a sales tax type charge.

One possible problem with a federal gross receipts tax is that the Vermont USF charge could be a tax on a tax. That is, the base for the Vermont charge would be the retail sale price of the service, including the federal charge.

Consistency between state and federal programs might be important. If the Commission should adopt a gross receipts type charge, Vermont may want to revisit its own charge. Conversion from a sales type charge to match the federal program might simplify administration and avoid a tax on a tax.

### 8. Treatment of Wholesale Charges

Another important issue is how to treat wholesale payments between carriers. Wholesale payments must be excluded somehow in order to maintain competitive neutrality. Two options are available. The Joint Board recommended that wholesale payments between carriers be deducted from the gross revenues of carriers. This is like a "value added" charge since carriers pay on the value of their finished product, net of their raw materials.

An alternative is the "retail sale" option: the charge would be imposed only on retail transactions. This is typically the way that state sales taxes operate. As with the value added option, the entire value of the service remains subject to the charge. However, the charge would be paid in fewer pieces. Rather than each carrier paying on its value added, the final carrier pays on the final retail price. This option might reduce bookkeeping and accounting costs. Carriers would be required to report revenues only when a product is sold to the final retail customer.

The retail sale option would be competitively neutral, but it would lead to lower wholesale prices. To the extent that the Commission selects a gross receipts type charge on value added, each wholesale sale will have to include some revenue to compensate the carrier for the cost of paying universal service charges. By contrast, a retail sale option requires only the final carrier to make payment, and wholesale prices can be set without reference to universal service charges.

## II. Lifeline

The Joint Board tentatively proposed a baseline federal support level for Lifeline assistance to eligible low-income customers of $5.25 (and up to $7.00 states where state Lifeline assistance is at least $3.50) but also recommended that the Commission seek additional information on the issue.[13] This level of federal Lifeline support improves on the current support level, and may be sufficient for low income subscribers residing in low cost urban areas.

However, it may not be sufficient to result in high penetration rates for low income individuals in all regions of the nation, including high cost areas. The result will depend in large part on the impact of competition and access reform on local service rates as well as on the efficacy of the Commission's high cost support rules. If, as a result of competition and access reform, rates in high cost areas rise above current levels notwithstanding high cost support, then the proposed federal support level of $5.25 or $7.00 will not be sufficient to achieve affordable rates for low income customers who happen to live in high cost areas.

[13] Joint Board Recommendations, ¶419.

Currently, dial tone line rates ("DTLR") in Vermont range between $11.90 and $19.90,[14] including line mileage charges but excluding the federal subscriber line charge ("SLC")and taxes. By statute, Vermont Lifeline subscribers receive credits on their DTLR of 50 percent in addition to receiving credit for the SLC under the federal program. With this credit, Lifeline subscribers face DTLR of between $5.95 and $9.95. However, all of Vermont's local exchange carriers charge for usage, with peak rates[15] ranging from 2.2 cents to five cents per minute, and even modest usage can create a hardship for low income subscribers.

The proposed increase in federal support from $3.50 to $7.00 (assuming the dollar level of Vermont state support does not change) may improve this situation for low income Vermonters. This will only be true, however, if competition, access reform, and high cost support do not cause the cost of local telephone service (with some usage) to increase by more than $3.50. If DTLR and usage rates should increase in high cost areas of Vermont despite federal high cost assistance, telephone service for low income Vermonters living in those areas may become prohibitively expensive notwithstanding the increase in federal Lifeline support. In fact, evidence produced by Vermont low income advocates suggests that low income Vermonters already forego telephone service because the price is prohibitive.

The Joint Board's recommendation to increase federal Lifeline support to $7.00 is encouraging, but this will maintain or improve penetration rates only if high cost support is sufficient to at least offset the impact on rates of competition and access reform. If high cost support does not accomplish this, then the proposed $7.00 level will not be adequate to make rates affordable for low income persons living in high cost areas.

---

14 As competition and access reform are introduced, these rates could increase significantly if high cost support is not fully funded. According to a study commissioned by the Vermont Public Service

## III. Local Calling Areas

The Joint Board found that the scope of the local calling area directly and significantly affects affordability.[16] The Commission should adopt this recommendation. As a rural area, Vermont's experience with calling areas offers strong support for this recommendation.

In its recently completed investigation of local calling areas, the Vermont Public Service Board found that only 34 percent of Vermont subscribers were able to reach more than 10,000 lines by local call, and the vast majority of those subscribers were located in or around Burlington, Vermont's only metropolitan area. Faced with this situation, the Public Service Board ordered expansion of the local calling area of each exchange to include contiguous exchanges and all exchanges within three miles of the home exchange.

While this expansion addressed the concerns of many Vermonters who had been unable to reach even nearby neighbors without incurring toll charges, it came at the price of higher monthly dial tone rates and the institution of local measured service ("LMS") charges in areas where none had existed before. In some of the territories served by local exchange carriers other than NYNEX, such LMS charges are now five cents per minute during peak periods. This adds considerably to the cost of keeping and using a telephone for local service.

Even after the expansion of calling areas, further Public Service Board investigation is showing that Vermont continues to have areas where local calling areas do not encompass communities of interest such as hospitals, schools, and commercial centers.

Students and parents often are unable to reach by local call their regional high schools, which draw students from large geographic but sparsely populated areas. In these areas, students are unable to reach other students at their schools without incurring toll charges. These toll charges average 19.3 cents per minute and are much higher for subscribers whose usage does not entitle them to volume discounts. Similar problems exists with local access to hospitals.

---

[16] Joint Board Recommendation, ¶128.

Finally, even after the recent calling area expansion and the associated rate increases, many customers do not have local access to commercial centers. The Public Service Board is currently considering further expansion for subscribers whose local calling areas still do not include even one small commercial center such as Brattleboro (pop. 12,123), Middlebury (pop. 8,034), or Newport (pop. 4434).

This illustrates the importance of calling areas in determining the value and affordability of telephone service. Because of its rural nature, Vermont must accommodate the desire for a local calling area that encompasses a customer's communities of interest with the desire to maintain monthly dial tone rates at affordable levels.

## IV. Schools and Libraries

Vermont's comments on support for schools and libraries embody the perspective of a rural state. As in many rural areas of the nation, educational and library services are provided in Vermont on a scale wholly different from metropolitan or suburban areas. For instance, the attached letter from Vermont's State Librarian notes several distinguishing and relevant characteristics of Vermont's libraries:

- Vermont has 204 public libraries, 70% of which are located in towns with populations less than 2000.
- 80% of Vermont's public librarians have no formal training.
- One third of Vermont's libraries are open less than 14 hours per week.
- Almost 50 of Vermont's libraries have no telephones.
- The State has an automated state library network ("VALS"), which is capable of providing reference resources and electronic access "to the world". But libraries must still pay for the phone line necessary to connect to the State's backbone network, and also pay LMS charges.

## A. Services Eligible for Discounts

The Commission should establish a priority order for addressing the telecommunications needs of schools and libraries, bearing in mind that financial resources are constrained. Telecommunications services that provide access are essential. This includes measured local usage. Services should be fully funded before subsidies for Internet connection and inside wiring are considered.

In addition, where Local Measured Service ("LMS") usage charges apply, they represent a significant and unavoidable cost for dial-up access to information services. Discounts on LMS are essential. While many local exchange carriers offer flat-rated local service, others rely upon LMS revenue to support the cost of the public switched network and assure that basic exchange rates remain affordable.

In Vermont, for instance, NYNEX customers pay 2.2 cents per minute during daytime hours for local service. Despite a cap on these charges, schools and libraries (which are rated as business customers) can pay up to $81 per month for dial tone and local usage. Other Vermont local exchange carriers charge as much as 5 cents per minute for local service, and have no similar caps on usage charges.

Each school and library should have flexibility to purchase whatever package of telecommunications services it believes will meet its telecommunications service needs most effectively and efficiently. This flexibility is also consistent with the Joint Board's interpretation of the Act.[17]

Limitations on the types of services which are eligible for discounts may have unintended effects. They could inhibit competition, technological innovation and the creative application of existing services. Also, they could encourage inferior or uneconomic means of interconnection.

The Commission should recognize that for many schools the principal barrier to utilization of advanced telecommunications services is not the cost of access lines or

---

[17] Joint Board Recommendations, ¶ 459.

local measured service, but the training costs for faculty and staff. It does students little good to have computers in the closet; they are useful only if they become part of a curriculum and are utilized by trained teachers. Giving a school a discount on ISDN lines will be of little value if there is no teacher at the school is familiar with Internet software.

The Act does not suggest or require a federal solution to this problem. State and local educational officials recognize this need and are addressing it in a variety of ways. Primarily, they are budgeting funds for professional development.

In addition, they are experimenting with ways to utilize higher education in training teachers, and much of this training is occurring using modern telecommunications. For example, the University of Vermont is offering credit bearing teacher training courses using KU band satellite technology.

**B. Intra-School and Intra-Library Connections (Inside Wire)**

We have three concerns regarding possible federal support for inside wiring. First, we recognize that total amount of subsidy available for schools and libraries may be constrained. We believe that discounts for telecommunications services should be adequately funded before the Commission undertakes any funding for inside wire. The Commission will not achieve the objectives of the Act if discounts for schools and libraries purchase of telecommunications services are curtailed to finance additional subsidies for inside wire.

Second, the competitively neutral funding mechanism which the Joint Board recommends may be difficult to achieve with respect to inside wire, since the price of such wiring is determined on a case-by-case basis. Assurance of competitive neutrality and determination of appropriate payments to subsidy recipients is a daunting administrative challenge, which would be far more complex than subsidizing tariffed telecommunications services.

Third, many schools and libraries in Vermont and elsewhere have been wired, at little cost to government, by volunteers installing donated equipment. A structured USF program that does not recognize the value of these grassroots, volunteer efforts would undercut a cost-effective way to wire the nation's schools and libraries.

Limited USF funds might be more usefully applied to telecommunications service discounts.

### C. Administration

Complex administration and application procedures will deter small school and library organizations. Programs must be accessible to small school districts and individual libraries, recognizing their limited administrative resources and telecommunications expertise.

School and library discount subsidies can be most effectively administered by state-level administrators. School and library governmental and administrative structures vary state to state, which would make administration by a single, national administrator difficult and ineffective. States are closer to the needs of their citizens and can coordinate services among the multiple recipients in particular areas.

States should have the option of chartering a nonprofit organization to administer these funds. In Vermont, the Vermont Council on the Arts or the Vermont Technology Council might serve as suitable models. Such an administrative system would provide strong community input into financial decisions. In addition, a nonprofit organization could be most successful in attracting private donations, particularly if it were a tax exempt organization. The opportunity to leverage business donations along with government funds could be an important ingredient in the successful use of the offered telecommunications discounts.

State agencies are well positioned to advise schools and libraries concerning ways to coordinate their activities and multiply the benefits of telecommunications services to rural areas. State administrators could even promote and allow joint applications by libraries, schools and rural health care facilities. This would create synergistic effects in small communities where libraries may be distant and where schools are sometimes not available to the public after normal school hours. Shared use of resources could extend the reach of telecommunications services farther into such communities.

In addition, state administrators could encourage purchase aggregation and volume discounts. This could further reduce the cost of telecommunications goods and services.

An important issue is the level of discretion in awarding grants. We do not propose that state administrators hold "veto authority" over the services for which schools and libraries seek discounts. Such an authoritarian approach could frustrate innovation and competition to the extent that one-solution-fits-all designs are specified by administrators. State administrators would be bound to provide support for telecommunications services meeting the Commission's specifications.

**D. Competitive Bids**

Citing Congress's intent to stimulate competition, the Joint Board recommended that schools and libraries be required to seek competitive bids for all services eligible for section 254(h) discounts.[18] Prescription of a competitive bidding requirement is not necessary to stimulate competition. Some schools and libraries may solicit bids, indeed, state law in Vermont requires schools to solicit bids whenever the cost of a "building, improvement, supply or equipment" exceeds $5,000. Robust competition in telecommunications clearly does not depend upon competitive bidding by schools and libraries.

A mandatory competitive bidding process may have the unintended consequence of deterring eligible organizations for applying for discounts. The process contemplated by the Joint Board might be feasible for the Chicago School District which is soliciting bids for hundreds or thousands of lines, but hardly so for a single municipal library that has one part-time employee and several volunteers (which would be a mid-sized library by Vermont standards). We urge the Commission to create a simple support program that is accessible to organizations of all sizes.

If a competitive bidding requirement is adopted, we suggest a waiver for school and library organizations that have fewer than ten access lines.

[18] Joint Board Recommendations, ¶ 539.

## E. Certification

The Joint Board recommended a number of process and reporting requirements for school and library discount programs: written comprehensive plans[19]; RFP's to all potential service providers;[20] and written requests and self-certifications.[21] The purpose would be to ensure efficient use of the discounted services and to enhance competition for the discounted purchases. While these goals are worthy, we express the same concern as for the proposed competitive bidding requirement.

Extensive administrative requirements will divert limited human resources to from their core public service and educational missions. Further, the process of applying for discounts may be so time-consuming that needy institutions choose to go without discounts, and perhaps without the intended services. The effect will be particularly noticeable in rural areas where professional staffs are small.

A waiver of these various requirements or a streamlined process (akin to IRS Form 1040EZ) for small organizations may strike a reasonable balance. Once again, organizations utilizing less than ten lines should perhaps be granted a waiver. In our view, the Joint Board's proposed requirements are precisely the sort for which the Paperwork Reduction Act was intended.

## F. Resale

The Joint Board recommended that the Commission interpret section 254(h)(3) to restrict any resale whatsoever of services purchased pursuant to a section 254 discount.[22] Resale restrictions should be narrowly construed solely to prohibit resale of the discounted telecommunications service to a non-qualifying entity. In addition, exceptions are needed.

---

[19] Joint Board Recommendations, ¶ 601.

[20] *Id.*, ¶ 602.

[21] *Id.*, ¶s 603-604.

[22] Joint Board Recommendations, ¶ 597-598.

First, user fees, such as laboratory fees at schools, should be permissible. We view these fees as charges for educational services or enhanced services, rather than resale of the discounted telecommunications services alone.

Second, we note that the Joint Board has recommended against 100% discounts. Schools and libraries should not be prohibited from charging as necessary to recover the remaining undiscounted costs.

The goals of the Act are promoted by allowing schools and libraries to charge the general public or students for information or enhanced services which may rely upon the discounted telecommunications service. The goal should be to frustrate arbitrage. The Commission should avoid rules that prohibiting efficient aggregation by state or county agencies.

Respectfully submitted,

for the
VERMONT DEPARTMENT OF PUBLIC SERVICE

Sheldon M. Katz, Esq.
Vermont Department of Public Service
Drawer 20
Montpelier, Vermont 05620-2601

for the
VERMONT PUBLIC SERVICE BOARD

Peter M. Bluhm, Esq.
Vermont Public Service Board
Drawer 20
Montpelier, Vermont 05620-2701

for the
VERMONT DEPARTMENT OF LIBRARIES

Patricia E. Klinck
State Librarian